

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region III**

**1650 Arch Street**

**Philadelphia, Pennsylvania 19103-2029**

**In Re:**

**Williams Ohio Valley Midstream LLC,  
100 Teletech Drive, Suite 2,  
Moundsville, West Virginia 26041,**

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**Clean Air Act, Section 113(a)(3)**

**NOTICE OF NONCOMPLIANCE**

**I. Preliminary Statement**

This Notice of Noncompliance is issued to Williams Ohio Valley Midstream LLC (Williams) to address violations of the Clean Air Act (Act or CAA), 42 U.S.C. § 7401 *et seq*, the United States Environmental Protection Agency (EPA) Region III asserts occurred at Williams's facility located at 100 Teletech Drive, Moundsville, West Virginia 26041 (Moundsville facility). The State of West Virginia is within the jurisdiction of EPA Region III.

**II. General Provisions**

1. One of the purposes of the CAA is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 101 of the CAA, 42 U.S.C. 7401. In 1970, EPA was tasked with developing New Source Performance Standards (NSPS) for industry classifications to require new or modified stationary sources, whose emissions were reasonably anticipated to endanger public health or welfare, to install the best system of emission reduction that the Administrator determined had been adequately demonstrated. The NSPS program regulates emissions of air pollutants from individual pieces of equipment and process units within a plant; it does not regulate entire plant sites. Section 111(b) provides authority for EPA to promulgate NSPS which apply only to new and modified sources. Pursuant to Section 111(b) of the CAA, as amended November 15, 1990, 42 U.S.C §7411(b), EPA promulgated NSPS regulations found at 40 C.F.R Part 60.

2. On August 23, 2011, the Administrator of EPA proposed a rule pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, establishing standards of performance for crude oil and natural gas production, transmission and distribution. This rule, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, was promulgated on August 16,

2012 and became effective on October 15, 2012. These standards are codified at 40 C.F.R. Part 60, Subpart OOOO (§§ 60.5360 - 60.5499) (hereafter, Subpart OOOO).

### **III. Findings of Fact and Conclusions of Law**

3. Williams is a domestic limited liability corporation incorporated in the State of Texas. Williams is doing business in the State of West Virginia. Williams is the current owner and operator of the Moundsville facility. The Moundsville facility was owned previously by Caiman Eastern Midstream LLC (Caiman). The permit to construct the initial fractionation unit, hot oil heater, and flare at the Moundsville facility was issued to Caiman by the West Virginia Department of Environmental Protection (WVDEP) on December 28, 2011 (Permit R13-2892). Williams purchased the Moundsville facility from Caiman on April 27, 2012 during its initial construction. The Moundsville facility, as initially constructed, commenced operation on November 22, 2012. The Moundsville facility, as initially constructed, was subject to Subpart OOOO.

4. Thereafter, Williams applied to WVDEP for a permit to modify the Moundsville facility (to add a second fractionation unit and a new flare). This permit was issued on May 28, 2013 (Permit R13-2892C) and, among other things, explicitly required Williams to comply with Subpart OOOO at the Moundsville facility (Condition 7.0). Operation of the second fractionation unit and new flare commenced on February 27, 2014. The Moundsville facility is, and has been since its initial construction, a processing site engaged in the fractionation of mixed natural gas liquids to natural gas products.

5. Williams is a "person" as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and as that term is used in Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

6. Williams's Moundsville facility includes an "onshore" "natural gas processing plant" within the meaning of those terms in Subpart OOOO.

7. Williams's Moundsville facility's onshore natural gas processing plant currently contains the following seven groups of components assembled for the fractionation of natural gas liquids into natural gas products: inlet, storage and loading, fractionation unit 1, fractionation unit 2, rail loading, condensate, and flare. Based on reports submitted by Williams to EPA Region III under Subpart OOOO, the inlet group has (and has had) valves, a pump, and connectors in VOC or wet gas service; the storage and loading group has (and has had) valves, pressure relief devices, pumps, and connectors in VOC or wet gas service; the fractionation unit 1 group has (and has had) valves, pressure relief devices, pumps, and connectors in VOC or wet gas service; the fractionation unit 2 group has (and has had) valves, pressure relief devices, pumps, and connectors in VOC or wet gas service; the rail loading group has (and has had) valves, pressure relief devices, and connectors in VOC or wet gas service; the condensate group has (and has had) valves, pressure relief devices, pumps, and connectors in VOC or wet gas service; and the flare

group has (and has had) valves in VOC or wet gas service. Each of the seven groups of components at Williams's onshore natural gas processing plant are a "process unit" and a "gas processing plant process unit" containing "equipment" within the meaning of those terms in Subpart OOOO at 40 C.F.R. § 60.5430.

8. Each group of equipment within each of the seven process units at Williams's Moundsville facility's onshore natural gas processing plant is an affected facility subject to Subpart OOOO, pursuant to 40 C.F.R. § 60.5365(f). As a consequence, 40 C.F.R. § 60.5400 applies to each group of equipment within each of the seven process units at Williams's Moundsville onshore natural gas processing plant.

9. Under 40 C.F.R. § 60.5400(a), each group of equipment within each of the seven process units at Williams's Moundsville onshore natural gas processing plant is required to comply with, among other things, 40 C.F.R. §§ 60.482-4a, 60.482-7a, and 60.482-11a, except as provided in 40 C.F.R. § 60.5401.

10. At Williams's Moundsville onshore natural gas processing plant, Williams has chosen to comply with the exception in 40 C.F.R. § 60.5401(b), instead of 40 C.F.R. § 60.482-4a, for pressure relief devices in gas/vapor service. None of the other exceptions in 40 C.F.R. § 60.5401 currently apply, or have applied at any time to date, to any of the groups of equipment within each of the seven process units at Williams's Moundsville onshore natural gas processing plant.

11. 40 C.F.R. § 60.5401(b) contains standards for pressure relief devices in gas/vapor service and requires, among other things, monitoring by detection instrument to detect leaks quarterly and within 5 days after each pressure release, and repair of any leaks detected by such monitoring.

12. 40 C.F.R. § 60.482-7a contains standards for valves in gas/vapor service and in light liquid service and requires, among other things, monthly monitoring by detection instrument to detect leaks, and repair of any leaks detected by such monitoring. If a leak is not detected for 2 successive months at a particular valve, that valve may be monitored the first month of every quarter until a leak is detected.

13. 40 C.F.R. § 60.482-11a contains standards for connectors in gas/vapor service and in light liquid service and requires, among other things, identification of such connectors, initial monitoring by detection instrument to detect leaks [and repair of any leaks detected by such monitoring (and remonitoring within 90 days of repair)], and subsequent monitoring by detection instrument to detect leaks [and repair of any leaks detected by such monitoring (and remonitoring within 90 days of repair)] at a frequency determined by the percent of leaking connectors in the prior monitoring.

14. 40 C.F.R. § 60.5401(b)(3)(i) requires that when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, unless certain circumstances exist which allow delay of repair under 40 C.F.R. § 60.482-9a.
15. 40 C.F.R. § 60.482-7a(d)(2) requires that a first attempt at repair be made no later than 5 calendar days after each leak is detected.
16. 40 C.F.R. § 60.482-7a(d)(1) requires that when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, unless certain circumstances exist which allow delay of repair under 40 C.F.R. § 60.482-9a.
17. 40 C.F.R. § 60.482-7a(c)(2) requires that if a leak is detected at a valve on quarterly monitoring, that valve shall be monitored monthly until a leak is not detected for two consecutive months.
18. On July 17, 2014, EPA Region III contacted Williams by email and requested that certain information be provided to EPA Region III personnel at an upcoming CAA compliance inspection to be conducted at Williams's Moundsville onshore natural gas processing plant the following week.
19. At the CAA compliance inspection conducted on July 23, 2014, Williams provided to EPA Region III personnel, among other things, a compact disc with equipment monitoring, leak detection and repair records under Subpart OOOO for Williams's Moundsville onshore natural gas processing plant. This compact disc included records for equipment subject to 40 C.F.R. §§ 60.482-7a and 60.5401(b).
20. Following the July 23, 2014 CAA compliance inspection, by letter and enclosure dated July 28, 2014, Williams provided EPA Region III with another compact disc with more complete equipment monitoring, leak detection and repair records under Subpart OOOO, covering the period from April 5, 2013 to July 22, 2014 (CD#2). CD#2 included records for equipment subject to 40 C.F.R. §§ 60.482-7a, and 60.5401(b).
21. Based on EPA Region III's review of the records contained on CD#2, Williams failed to make a first attempt at repair of a leaking valve in gas/vapor or light liquid service within 5 calendar days of the date the leak was detected on 21 occasions. These failures are listed in the attached Table 1.
22. In failing to make a first attempt at repair of a leaking valve in gas/vapor or light liquid service within 5 calendar days of the date the leak was detected on 21 occasions, Williams violated 40 C.F.R. § 60.482-7a(d)(2) and 40 C.F.R. § 60.5400(a) on 21 occasions.
23. Based on EPA Region III's review of the records contained on CD#2, Williams failed to repair a detected leak at a leaking valve in gas/vapor or light liquid service within 15 calendar

days on 28 occasions when no circumstances existed allowing delay of repair under 40 C.F.R. § 60.482-9a. These failures are listed in the attached Table 2.

24. In failing to repair a detected leak at a leaking valve in gas/vapor or light liquid service within 15 calendar days on 28 occasions when no circumstances existed allowing delay of repair under 40 C.F.R. § 60.482-9a, Williams violated 40 C.F.R. § 60.482-7a(d)(1) and 40 C.F.R. § 60.5400(a) on 28 occasions.

25. Based on EPA Region III's review of the records contained on CD#2, Williams failed to repair a detected leak at a leaking pressure relief device in gas/vapor service within 15 calendar days on 2 occasions when no circumstances existed allowing delay of repair under 40 C.F.R. § 60.482-9a. These failures are listed in the attached Table 2.

26. In failing to repair a detected leak at a leaking pressure relief device in gas/vapor service within 15 calendar days on 2 occasions when no circumstances existed allowing delay of repair under 40 C.F.R. § 60.482-9a, Williams violated 40 C.F.R. § 60.5401(b)(3)(i) on 2 occasions.

27. Based on EPA Region III's review of the records contained on CD#2, Williams failed, on 2 occasions, to monitor monthly for two consecutive months following the detection of a leak at a valve in gas/vapor or light liquid service. These failures are listed in the attached Table 3.

28. In failing on 2 occasions to monitor monthly for two consecutive months following the detection of a leak at a valve in gas/vapor or light liquid service, Williams violated 40 C.F.R. § 60.482-7a(c)(2) and 40 C.F.R. § 60.5400(a) on 2 occasions.

29. To date, Williams has submitted six reports under Subpart OOOO for its Moundsville onshore natural gas processing plant. These reports are dated July 19, 2013, January 22, 2014, July 18, 2014, August 28, 2014, January 26, 2015, and July 20, 2015. Based on EPA Region III's review of these six reports, and the information gathered before, during and after the July 23, 2014 CAA compliance inspection (including the records contained on CD#2), since the October 15, 2012 effective date of Subpart OOOO, Williams has failed, for connectors in gas/vapor service and in light liquid service, to identify such connectors, to conduct initial monitoring by detection instrument to detect leaks [and repair any leaks detected by such monitoring (and remonitor within 90 days of repair)], and to conduct subsequent monitoring by detection instrument to detect leaks [and repair any leaks detected by such monitoring (and remonitor within 90 days of repair)] at a frequency determined by the percent of leaking connectors in the prior monitoring, and has failed to otherwise comply with the requirements of 40 C.F.R. § 60.482-11a and 40 C.F.R. § 60.5400(a), and all other applicable requirements of Subpart OOOO regarding connectors in gas/vapor service and in light liquid service.

30. As a consequence, Williams has violated all applicable requirements of Subpart OOOO, regarding connectors in gas/vapor service and in light liquid service at its Moundsville onshore natural gas processing plant from the October 15, 2012 effective date to the present.

#### IV. Enforcement, Conference and Disclosure

31. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides that the Administrator may bring a civil or administrative action whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, Titles I and V of the CAA including any rule or permit issued thereunder.

48. Section 113(a)(3), (b) and (d) of the CAA, 42 U.S.C. § 7413(a)(3), (b) and (d), authorizes the Administrator to issue an administrative penalty order, issue an order requiring compliance with the CAA, and to initiate a civil enforcement action for a permanent or temporary injunction, and/or for a penalty. Section 113(a)(3), (b) and (d) of the CAA authorizes penalties of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

49. Section 113(c) of the CAA, 42 U.S.C. § 7413(c), further provides for criminal penalties or imprisonment, or both, for certain violations of the CAA.

50. Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), states that the Administrator or the court, in an action for assessment of civil or criminal penalties shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

51. Section 113(e)(2) of the CAA, 42 U.S.C. § 7413(e)(2) allows the Administrator or the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the United States or EPA makes a *prima facie* showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of the notice and each and every day thereafter, until respondent establishes that continuous compliance has been achieved; except to the extent that respondent can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

52. Williams may, upon request, confer with EPA. The conference will enable Williams to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this notice. A request for a conference, and/or any other inquiries concerning the notice should be made in writing to:

Bruce Augustine  
Senior Environmental Scientist  
Air Protection Division  
U. S. Environmental Protection Agency - Region III  
Mail Code 3AP20  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2131

If you are represented by counsel, your counsel may contact:

Donna L. Mastro, Esq.  
Air Branch Chief  
U. S. Environmental Protection Agency - Region III  
Mail Code 3RC10  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2777.

53. This notice shall be effective immediately upon receipt. If you have any questions concerning the issuance of this notice, you may contact Bruce Augustine of my staff at 215-814-2131. If you are represented by counsel, your counsel may contact Donna L. Mastro, Air Branch Chief, at (215) 814-2777.

54. Certain companies may be required to disclose to the Securities and Exchange Commission (SEC) the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under federal, state or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company may be subject to the same.

55. EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources," (EPA 300-F-99-004, September 1999), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with federal and state environmental laws.

Date

2/14/2016



David L. Arnold, Acting Director  
Air Protection Division  
United States Environmental Protection Agency  
Region III



## Enclosure 1

## Williams OVM Moundsville LDAR

Table 1					
Failure to conduct first attempt at repair within 5 days					
Component ID	Unit	Component Type	Date Leak Detected	Date of Next Monitoring	# Days >5 <=15 Days from Detection of Leak
72398	Storage/Loading	Valve	4/30/2014 14:46	5/14/2014 12:56	9
71319	Frac 1	Valve	10/15/2013 13:26	11/22/2013 13:26	10
71536	Storage/Loading	Valve	10/15/2013 13:33	11/27/2013 11:03	10
71616	Frac 1	Valve	9/9/2013 11:41	10/15/2013 16:05	10
71616	Frac 1	Valve	12/18/2013 14:15	1/8/2014 11:55	10
71616	Frac 1	Valve	2/24/2014 16:14	3/17/2014 14:28	10
71616	Frac 1	Valve	5/14/2014 12:38	6/6/2014 11:06	10
71617	Frac 1	Valve	1/8/2014 11:57	2/24/2014 16:16	10
71617	Frac 1	Valve	3/17/2014 14:38	4/16/2014 10:35	10
72107	Storage/Loading	Valve	3/17/2014 14:52	4/22/2014 15:14	10
72107	Storage/Loading	Valve	6/6/2014 11:57	7/8/2014 11:21	10
72243	Storage/Loading	Valve	4/23/2014 12:56	5/13/2014 15:30	10
72398	Storage/Loading	Valve	10/18/2013 14:01	11/22/2013 12:05	10
72398	Storage/Loading	Valve	11/22/2013 12:05	12/18/2013 15:20	10
72398	Storage/Loading	Valve	12/18/2013 15:20	1/13/2014 14:21	10
72398	Storage/Loading	Valve	1/13/2014 14:21	2/24/2014 13:22	10
72398	Storage/Loading	Valve	6/6/2014 12:29	7/7/2014 10:33	10
72431	Storage/Loading	Valve	3/17/2014 15:06	4/23/2014 18:23	10
72431	Storage/Loading	Valve	6/6/2014 12:34	7/7/2014 15:20	10
73066	Storage/Loading	Valve	5/14/2014 13:09	6/6/2014 14:54	10
73215	Storage/Loading	Valve	11/22/2013 12:22	12/18/2013 15:44	10



## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrf.org](http://www.nmfrf.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP and Oil Information Center

[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center

**Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791

## Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

## Toxic Substances Control Act (TSCA) Hotline

[tsc hotline@epa.gov](mailto:tsc hotline@epa.gov) or 1-202-554-1404

## Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

## Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

## State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

## State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

## EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

## EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

## EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

## EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

## Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

## Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*

## **NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 C FR 22.8.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 551-3115.

[Code of Federal Regulations]  
[Title 17, Volume 2, Parts 200 to 239]  
[Revised as of April 1, 1999]  
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## TITLE 17--COMMODITY AND SECURITIES EXCHANGES

### CHAPTER II--SECURITIES AND EXCHANGE COMMISSION

#### PART 229--STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975-- REGULATION S-K--Table of Contents

##### Subpart 229.100--Business

##### Sec. 229.103 (Item 103) Legal proceedings.

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

##### Instructions to Item 103:

1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.
2. No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.
3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.
4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.
5. Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:
  - A. Such proceeding is material to the business or financial condition of the registrant;
  - B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
  - C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.